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HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No. 187 / 2003

Digvijaydas Vaishnav

Vs.

Smt. Shraddha Vaishnav

Post for Order: 02.04.2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No. 187/2003

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant (Applicant in the Court below)	Digvijaydas Vaishnav, S/o Late Gangadas Vaishnav, Aged about 35 years, R/o Village Konhlatola, P.S. & Tehsil:Chhuikhadan, District-Rajnandgaon (C.G.)
	VERSUS
Respondent (Non-applicant in Court below)	Smt. Shraddha Vaishnav, W/o Digvijaydas Vaishnav, Aged about 29 years, R/o Village-Biranpur (khurd), P.S. Mandai, Tehsil-Chhuikhadan, District-Rajnandgaon, (C.G.)

Present:-
Shri P. Diwakar, learned Sr. Counsel with Kunal Das, counsel for the appellant.
Shri R. S. Baghel, Counsel for the respondent.

JUDGMENT
(Delivered on this 02nd day of April, 2007)

This appeal is directed against the judgment dated 9.9.2003 delivered by Additional District Judge, Khairagarh, Distt. Rajnandgaon in Civil Suit No. 6-A/2001 whereby the application under Section-13 of the Hindu Marriage Act filed by the appellant/husband was dismissed.

2. The appellant herein had filed an application under Section 13 of the Hindu Marriage Act on two grounds namely- (a) that after the solemnization of the marriage, the non-applicant had voluntary sexual intercourse with one Rituraj and (b) that after solemnization of the marriage, the non-applicant had treated the appellant with cruelty.

3. It is not disputed that on 19.5.1991, marriage was solemnized according to Hindu customs between the appellant and the respondent/non-applicant and two sons were born out of their marital wedlock. The first son was born on 5.8.1992 and the second son on 8.4.1995. Thereafter, the respondent had undergone (sterilization) family

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planning operation. In 1998 the appellant, a teacher, was transferred to village Sarodhi, Tahsil Chhuikhadan, District Rajnandgaon and the respondent lived in her matrimonial house, village Kohlatola, with her mother-in-law and brother-in-law.

4. Appellant/applicant contended before the lower Court that on 23.4.2000, First Information Report was lodged by the Respondent/non-applicant that on 22.4.2000 at 2.00 P.M., one Rituraj had forcibly entered into the house and committed rape on her. On the basis of the said report, criminal prosecution S.T. No. 206/2000 was lodged against Rituraj under Section-376 of I.P.C. The prosecutrix i.e. the respondent/non-applicant herein was not examined by the prosecution in the aforesaid Session Trial which resulted in acquittal. Reliance was placed by the appellant on some letters alleged to have been written by Rituraj to the respondent and the admission made by the respondent/non-applicant before the panchas about having illicit relationship with Rituraj. This was borne out from the testimony of AW-2, AW-3 and AW-4. It was also contended that at the behest of Rituraj the respondent/non-applicant administered certain medicines to the appellant to eliminate him and in this manner acted with cruelty.

5. The respondent/non –applicant refuted the above allegations *in toto* and contended that she was continuously harassed by the appellant/applicant and his brother Bharat Das Vaishnav who was an Advocate. Bharat Das Vaishnav used to threaten to sexually assault her. She never had any illicit relationship with Rituraj and she was forced to sign the F.I.R. which was also lodged by the appellant herein. It was also denied that she ever received any letters or obtained any medicines from Rituraj and administered it to the appellant to cause harm to his health. It was also specifically denied that the respondent herein ever admitted her illicit sexual relationship with Rituraj in the *Baithka.*

6. Besides examining himself, the appellant herein examined Chandrasekhar Das Vaishnav (A.W.2) a close relative, Raghav Das Vaishnav (A.W.3) a member of his community and one Bhagelram

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(A.W.4). The respondent examined herself in rebuttal and was cross-examined by Bharat Das Vaishnav, Advocate against whom the respondent had levelled allegations of threatening to sexually assault her.

7. The learned Additional District Judge, Khairagarh, on the basis of a well reasoned order, recorded a finding that the appellant herein had failed to establish that the respondent-wife had voluntarily indulged in sexual relationship with Rituraj. It also held that the possibility that the letter Ex.P.16 was got written from the respondent per force, could not be ruled out. In the absence of any evidence to prove that the letters Ex.P.14 and P.15 were written by Rituraj, it recorded a finding that the appellant herein had failed to prove any act of cruelty on the part of the respondent-wife. Consequently, it dismissed the application under Section 13 of the Hindu Marriage Act.

8. Shri Kunal Das, learned counsel for the appellant, at the very threshold conceded that the appellant had failed to establish the ground under Section 13(1)(i) of the Hindu Marriage Act, 1955. He assailed the impugned order only on the ground that the letters written by Rituraj Ex.P.14 and P.15 and the admissions made by the respondent-wife before the witnesses examined by the appellant herein clearly established that the respondent-wife used to administer some medicine in the food to her husband to cause harm to his life. It was also argued that the letters Ex.P.14 and P.15 clearly proved an act of cruelty towards the husband by the respondent-wife. On the other hand, Shri R.S.Baghel, learned counsel for the respondent argued in support of the impugned order.

9. Having heard the rival contentions, I have perused the record of Civil Suit No.6-A of 2001. In view of the fact that the ground under Section 13 (1) (i) of the Hindu Marriage Act has been given up by the learned counsel for the appellant in this appeal, the only question that requires consideration is whether the appellant has established that he was treated with cruelty by the respondent-wife after solemnization of the marriage.

10. It is not disputed that the marriage was solemnized between the two spouses on 19.5.1991 and the first son was born on 05.08.1992 and the second on 08.04.1995 and thereafter the respondent-wife had undergone a sterilization operation. It would thus appear that after their marriage the two spouses were living happily. The testimony of Chandrasekhar Das Vaishnav (A.W.2) clearly goes to show that no conflict ever arose between the two spouses. It is therefore difficult to comprehend that the respondent herein would administer any medicine to her husband to cause harm to his life. From the facts and circumstances, it is clearly seen that the trouble started when the appellant left Kohlatola on transfer and lived alone at Sarodhi, his place of posting.

11. It is pertinent to note that in his testimony, the appellant Digvijay Das has not stated anywhere that the respondent-wife had administered some medicine to him in the food which had shown its ill-effects on his health. The testimony of Chandrasekhar Das Vaishnav (A.W.2), Raghav Das Vaishnav (A.W.3) and Bhagelram (A.W.4) is also silent on this point. All these witnesses state that Shraddha Vaishnav had admitted in the *Baithka* that the letters Ex.P.14 and P.15 were written by Rituraj in which it was written that she should administer some medicine to her husband so that he becomes mad. However, there is absolutely no evidence to prove that the letters Ex.P.14 and P.15 were written by Rituraj. Digvijay Das has neither examined a hand-writing expert nor produced any undisputed hand-writings of Rituraj so as to establish that letters Ex.P.14 and P.15 are written by Rituraj. In the absence of any evidence to show that even in the *Baithka* , the appellant had alleged that his wife Shraddha Vaishnav had administered some medicine to him in the food which had caused any harm to his health, the allegation levelled by the appellant is rendered completely false.

12. A perusal of the judgment of the Sessions Court Ex.p.19 shows that Shraddha Vaishnav was neither examined by the prosecution nor any serious efforts made to produce her before the Court. The possibility that the F.I.R. was concocted could also not be ruled out, in the facts and circumstances of this case. It is difficult to believe that a wife, who has a

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happy married life for eight years and has two sons out of their marital wedlock and is living peacefully with her husband, would indulge in a sexual relationship with a stranger in full day light inside her own house where her mother-in-law and brother-in-law are also staying. The learned lower Court has given cogent reasons for reaching a conclusion that the possibility that the F.I.R. was got forcibly signed from Shraddha Vaishnav could not be ruled out. I fully concur with the reasonings and findings recorded by the learned Additional District Judge, Khairagarh that the appellant herein has failed to establish any act of cruelty by his wife Shradhha Vaishnav after the solemnization of his marriage.

13. Learned counsel for the appellant argued that there has been an irretrievable breakdown of marriage between the two spouses, and therefore, the dissolution of marriage was not only in the interest of the parties but also in the interest of the society. Reliance was placed on *Naveen Kholi vs. Neelu Kohli* **(2006) 4 SCC 558.** However, the facts of the case do not show that there has been an irretrievable breakdown of marriage. The respondent-wife has clearly asserted in paragraph 22 of her written statement that she wanted to live with the appellant and her sons to lead a happy family life. Rightly so because it is undisputed that the appellant and the respondent had a very happy family life after their marriage in the year 1991 till 1999. This is also borne out from the testimony of Raghav Das Vaishnav (A.W.2) and also from the fact that two sons were born out of their marital wedlock. It appears that under the influence of Bharat Das Vaishnav, the F.I.R. was concocted and the present petition under Section 13 of the Hindu Marriage Act is also an off-shoot of the same. The manner in which the respondent asserted that Bharat Vaishnav came and slept beside her and also the manner in which Bharat Vaishnav, an advocate, cross-examined the respondent at length on behalf of the appellant does not rule out the possibility that the respondent used to feel unsafe in her matrimonial home in the absence of her husband who was living and serving outside at village Sarodhi, Tahsil Chhuikhadan, District Rajnandgaon. Therefore, in the facts and circumstances, it cannot be said that there has been an irretrievable breakdown of marriage between the two spouses.

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14. In the result, the well reasoned findings recorded by the learned Additional District Judge, Khairagarh are affirmed. The appeal being devoid of any merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani